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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-----------------------|---------------------|------------------|
| 09/696,735      | 10/25/2000  | Glynis Allicia Walton | KCC-13,406.1        | 2992             |

35844 7590 03/06/2003

PAULEY PETERSEN KINNE & ERICKSON  
2800 WEST HIGGINS ROAD  
SUITE 365  
HOFFMAN ESTATES, IL 60195

EXAMINER

VO, HAI

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1771

DATE MAILED: 03/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/696,735

Applicant(s)

WALTON ET AL.

Examiner

Hai Vo

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 33-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 33-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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1. Claim 15 has been canceled in the amendment received on 12/23/2002.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-10, 12, 13 and 33-39 are rejected under 35 U.S.C. 102(b) as being anticipated by McCormack (US 5,695,868) substantially as set forth in Paper no. 10. Table 1 of US'868 reads on the weight ratio limitation set out in the claims.
4. Claims 1-10, and 33-39 are rejected under 35 U.S.C. 102(b) as being anticipated by anticipated by WO 99/47590. WO'590 discloses a film segment **12** comprising a microporous LLDPE film having calcium carbonate particles (page 13, lines 9-10). WO'590 further discloses a bonding agent added within a segment wherein the bonding agent is disclosed in US Patent No. 5,695,868 to McCormack (page 16, lines 23-25). Table 1 of US'868 reads on the weight ratio limitation set out in the claims.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 1-4, 6-14, and 33-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCormack et al (US 6,015,764). McCormack US'764 is silent as to the weight ratio of the styrenic block copolymer to LLDPE. However, such a variable would have been recognized by one skilled in the art to control the degree of the stretchability and the water vapor rate transmission rate of the film such that the film stretchability increases with increasing amount of the styrenic block copolymer and the water vapor rate transmission rate of the film decreases with the increase in styrenic block copolymer. As such, in the absence of unexpected results, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the claimed ratio weight of styrenic block copolymer to LLDPE since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

#### ***Response to Arguments***

7. Applicant's arguments with respect to claims 1-14, 33-40 have been considered but are moot in view of the new ground(s) of rejection.
8. The 102/103 art rejections over McCormack et al (US 6,015,764) have been overcome by the present amendment.
9. The art rejections over McCormack et al (US 5,695,868) and WO 99/47590 have been maintained for the following reasons. Table 1 of US'868 shows the film comprising 15 wt% bonding agent and 20 wt% LLDPE. Likewise it is apparent

that the weight ratio of the bonding agent to LLDPE is  $\frac{3}{4}$ , meeting the specific range required by the claims.

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (703) 605-4426. The examiner can normally be reached on Tue-Fri, 8:30-6:00 and on alternating Mondays.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone

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numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

HV  
March 1, 2003

  
TERREL MORRIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700